

§ 223.53

timber sale purchasers. For any contract which has been awarded and has not been terminated, the Forest Service, upon a purchaser's written request, will add 1 year to the contract's terms, except as provided in paragraphs (c)(1) through (4) of this section. This 1-year addition includes time outside of the normal operating season.

(1) Additional contract time may not be granted for those portions of the contract:

- (i) With a required completion date;
- (ii) Where the Forest Service determines that the timber is in need of urgent removal;
- (iii) Where timber deterioration or resource damage may result from delay; or
- (iv) Where included timber is designated by diameter and delay may change the treatment as a result of trees growing into or out of the specified diameter range(s).

(2) For each additional consecutive quarter in which a contract qualifies for market-related contract term addition, the Forest Service will, upon the purchaser's written request, add an additional 3 months during the normal operating season to the contract, except that no single 3-month addition shall extend the term of a contract by more than 1 year.

(3) No more than 3 years shall be added to a contract's term by market-related contract term addition unless the following conditions are met:

- (i) The sale was awarded after December 31, 2006;
- (ii) A drastic reduction in wood product prices occurred in at least ten of twelve consecutive quarters during the contract term, but not including the quarter in which the contract was awarded; and

(4) For each qualifying quarter meeting the criteria in paragraph (c)(3)(ii) of this section, the Forest Service will, upon the purchaser's written request, add an additional 3 months during the normal operating season to the contract, except no single 3-month addition shall extend the term of a contract by more than 1 year.

(5) In no event shall a revised contract term exceed 10 years as a result of market-related contract term addition.

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(d) *Recalculation of periodic payments.* Where a contract is lengthened as a result of market conditions, any subsequent periodic payment dates shall be delayed 1 month for each month added to the contract's term.

[63 FR 24114, May 1, 1998, as amended at 70 FR 37269, June 29, 2005; 71 FR 3411, Jan. 23, 2006; 73 FR 65551, Nov. 4, 2008]

§ 223.53 Urgent removal contract extensions.

(a) *Finding.* There is substantial, overriding public interest in extending National Forest System timber sale contracts for undamaged (green) timber not requiring expeditious removal in order to facilitate the rapid harvest of catastrophically damaged timber requiring expeditious removal on private or other non-National Forest System lands. Such an extension may be granted when a specific catastrophic event beyond the control of the landowner occurs on non-National Forest System lands that poses a threat to general forest health, public safety, and property. Catastrophic events include, but are not limited to, severe wildfire, wind, floods, insects and disease infestation, and drought.

(b) *Regional Forester determination.* If the Regional Forester determines that adequate cause for urgent removal extensions exists, Contracting Officers may extend National Forest System timber sale contracts, up to a maximum of 1 year, for the estimated amount of time required to harvest and process the damaged timber on non-National Forest System lands. Contracting Officers may grant urgent removal extensions only when the Regional Forester verifies in writing that:

(1) A specific catastrophe occurred for which urgent removal extensions should be granted;

(2) The manufacturing facilities or logging equipment capacity available to purchasers are insufficient to provide for both the rapid harvest of damaged non-National Forest System timber in need of expeditious removal and the continued harvest of undamaged (green) timber under contract with the Forest Service; and

(3) Failure to harvest the damaged non-National Forest System timber promptly could result in the following:

- (i) Pose a threat to public safety,
- (ii) Create a threat of an insect or disease epidemic to National Forest System or other lands or resources, or
- (iii) Significant private or other public resource loss.

(c) *Purchaser request.* To obtain an urgent removal extension on a National Forest System timber sale contract, a purchaser must make a written request to the Contracting Officer, which includes the following:

(1) An explanation of why the harvest of undamaged (green) National Forest System timber within the term of the existing National Forest System contract(s) will prevent or otherwise impede the removal of damaged non-National Forest System timber in need of expeditious removal; and

(2) Documentation that the manufacturing facilities or logging equipment capacity available to a purchaser would be insufficient to provide for both the rapid salvage of damaged non-National Forest System timber in need of expeditious removal and continued harvest of undamaged (green) National Forest System timber under contract with the Forest Service.

(d) *Contracting Officer determination.* To grant an urgent removal extension, the timber sale Contracting Officer must verify the following:

(1) That it is likely that the undamaged (green) timber from National Forest System land would be delivered to the same manufacturing facilities as are needed to process the damaged non-National Forest System timber or the National Forest System timber sale contract would require the use of the same logging equipment as is needed to remove the damaged non-National Forest System timber from the area affected by the catastrophe;

(2) That extension of the National Forest System contract will not be injurious to the United States and will protect, to the extent possible, the health of the National Forest System lands, including:

(i) That urgent removal extension does not adversely affect other resource management objectives to be implemented by the National Forest System timber sale being extended; and

(ii) That the National Forest System timber sale contract to be extended is not a sale containing damaged, dead, or dying timber subject to rapid deterioration.

(3) That the purchaser has not been granted a previous urgent removal extension on the same National Forest System timber sale contract based on the current catastrophic event. Subsequent urgent removal extensions may be granted if there are subsequent Regional Forester determinations on other catastrophic events.

(4) That the revised National Forest System timber sale contract term will not exceed 10 years from the date the National Forest System contract was awarded; and

(5) That the purchaser is not in breach of the National Forest System contract, and all work items, payments, and deposits are current.

(e) *Execution of contract extension.* An urgent removal extension of a National Forest System timber sale contract is executed through a mutual agreement contract modification pursuant to §223.112, which must include specific contract provisions. An agreement to modify a contract must identify the specific provision(s) of the contract being modified and must include the requirement that purchasers make cash payment to cover the costs of remarking timber on the sale area or re-establishing cutting unit boundaries if the Contracting Officer determines such work is necessary.

(f) *Information collection.* The information required of a purchaser to request an extension of an National Forest System timber sale contract, as outlined in paragraph (c) of this section, to facilitate expeditious removal of timber from non-National Forest System lands constitutes an information collection requirement as defined in 5 CFR Part 1320 and has been assigned Office of Management and Budget control number 0596-0167.

[67 FR 70169, Nov. 21, 2002, as amended at 69 FR 33, Jan. 2, 2004]

§ 223.60

APPRAISAL AND PRICING

§ 223.60 Determining fair market value.

The objective of Forest Service timber appraisals is to determine fair market value. Fair market value is estimated by such methods as are authorized by the Chief, Forest Service, through issuance of agency directives (36 CFR 200.4). Valid methods to determine fair market value include, but are not limited to, transaction evidence appraisals, analytical appraisals, comparison appraisals, and independent estimates based on average investments. Pertinent factors affecting market value also considered include, but are not limited to, prices paid and valuations established for comparable timber, selling value of products produced, estimated operating costs, operating difficulties, and quality of timber. Considerations and valuations may recognize and adjust for factors which are not normal market influences.

[61 FR 5685, Feb. 14, 1996]

§ 223.61 Establishing minimum stumpage rates.

The Chief, Forest Service, shall establish minimum stumpage rates, i.e., "base rates," for species and products on individual National Forests, or groups of National Forests. Timber shall be sold for appraised value or minimum stumpage rates, whichever is higher. No timber may be sold or cut under timber sale contracts for less than minimum stumpage rates except to provide for the removal of insect-infested, diseased, dead or distressed timber or in accordance with contract provisions specifically providing for catastrophically-affected timber and incidental amounts of material not meeting utilization standards of the timber sale contract. For any timber sale offering where deposits are to be required for reforestation under the Act of June 9, 1930, as amended (46 Stat. 527; 16 U.S.C. 576-576b) which exceed the value of the established minimum stumpage rates, the minimum rates may be increased by the approving officer as necessary to the amount of such required reforestation deposits and a minimum deposit to the Treasury. Minimum rates in timber sale contracts will not

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be set higher than established minimum rates for purposes other than assuring adequate funds for reforestation.

§ 223.62 Timber purchaser road construction credit.

Appraisal may also establish stumpage value as if unconstructed roads or other developments needed by the purchaser for removal of the timber were in place. When timber is appraised and sold on such basis, *purchaser credit* for road construction, not to exceed the estimated construction cost of such roads or other developments specified in the timber sale contract, shall, when such construction is accomplished by purchaser, be deducted from stumpage payments made by or due from purchaser under the timber sale contract for other than minimum stumpage rates and required deposits for slash disposal and road maintenance. As used in this section *estimated construction costs* means the total cost of constructing all permanent roads specified in the timber sale contract, estimated as if construction is to be accomplished by an independent contractor who is not the timber purchaser. In determining the purchaser credit amount applicable against timber payments, the estimated construction cost may be reduced for the effect of differences in applicable wage rates.

§ 223.63 Advertised rates.

Timber shall be advertised for sale at its appraised value. The road construction cost used to develop appraised value means the total estimated cost of constructing all permanent roads specified in the timber sale contract, estimated as if construction is to be accomplished by the timber purchaser. The advertised rates shall be not less than minimum stumpage rates, except that sales of insect-infested, diseased, dead, or distressed timber may be sold at less than minimum rates when harvest of such timber is necessary to protect or improve the forest or prevent waste of usable wood fiber.

[71 FR 11510, Mar. 8, 2006]